IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1927 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 1 - Petitioner(s)
Versus
MOHAMMEDMIYA M KAZI - Respondent(s)

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Appearance :
MS AVANI MEHTA for Petitioner(s) : 1 - 2
MR CP JADHAV for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 24/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioners – Union of India and Divisional Railway Manager have challenged in this petition the impugned judgment and order dated 17.10.2001 passed by the learned Central Administrative Tribunal (for short `the Tribunal') in Original Application No.446 of 1996 whereby the learned Tribunal allowed the application filed by the respondent – original applicant and quashed and set aside the impugned orders of penalty dated 8.5.1995 passed by the Disciplinary Authority and the order dated 16.5.1995 and awarded all the consequential benefits of service to the original applicant.

Ms.Avni Mehta learned counsel for the petitioners vehemently submitted that once the Inquiry Officer found in the inquiry against the delinquent that he was rash and negligent in driving the train and that the Disciplinary Authority concurred with that finding, then it was not open to the Tribunal to interfere with such findings in application filed by the original applicant and to quash and set aside the order of penalty by holding that there was no negligence on the part of the original applicant.

Before appreciating the aforesaid submission made by Ms.Mehta, few relevant facts are required to be stated, which are as under :-

The original applicant was working as A/C Driver `C' in Electric Locomotives at Ahmedabad in Elec./Mech. Deptt. in Baroda Division, Western Railway. He was served with the charge sheet to the effect that;

> “While working as A/C Driver `C' of DN Goods Train No.KBCS/HRI on 14.5.87 at BRC you failed to control the train and passed Home signal No.4/30 at danger at PIO.
>
> You are fully responsible for neglecting the signal of Count line at PIO on 14/5/97”.

On receipt of the charge sheet, the original applicant submitted his reply and contended that while he was working as Goods Train Driver he passed home signal No.4/30 at Danger due to signal misunderstanding and he controlled the train in time, but due to either brake power being poor or less amount of CMS of Vacuum in rear HVG, he overshoot the signal by few feet only. When the incident had taken place, joint observation of brake power was not taken by the Inspector who recorded the statement. Due to the poor power brake and misunderstanding of the signal on his part, such an incident had happened for the first time in his long service of 33 years.

However, the Disciplinary Authority was not convinced with the explanation offered by the applicant in his reply to the charge sheet and

accordingly domestic inquiry was held and on the conclusion of the inquiry, the Inquiry Officer submitted his report against the applicant and found him guilty. The Disciplinary Authority concurred with the findings recorded by the Inquiry Officer and awarded maximum penalty of dismissal. Against which the original applicant preferred an appeal before the Appellate Authority, which was also dismissed. Aggrieved of those orders passed by the Disciplinary Authority and Appellate Authority, the original applicant initially approached the learned Tribunal by way of O.A. No.130 of 1989. The said O.A. was disposed of by the learned Tribunal on 23.4.1990 with a direction to the Appellate Authority to deal with the appeal on merits by a reasoned order.

On remand, the Appellate Authority interfered with the order of penalty and by its order dated 30.4.1991 awarded lesser punishment of reversion to the post of Shunter for a period of 2 years with future effect. Aggrieved of the order, the original applicant once again approached the learned Tribunal by way of O.A. No.446 of 1996 which came to be allowed fully by the learned Tribunal by its impugned judgment and order dated 17.10.2001 and the impugned orders came to be quashed and all the consequential benefits to the original applicant were awarded as the learned Tribunal was of the opinion that there was no material on record to come to the conclusion that the original applicant had acted negligently or carelessly at the time of incident. Thus, in short,

the learned Tribunal was of the considered opinion that it was a case of `no evidence' and the Department failed to prove the charge of negligence or careless driving against the delinquent.

In view of the above, we will now consider the aforesaid submission made by Ms.Mehta for the petitioners.

It is no doubt true that normally when the Disciplinary Authority comes to the conclusion that the charges are found to be proved against the delinquent officer in a regular departmental inquiry, then it would not be open to the tribunal to interfere with such findings. However, if there is `no evidence' on record to come to such conclusion, then in our considered opinion it would be open to the tribunal to interfere. In the instant case, it is an admitted fact that the west line gate signal was green and because of that the original applicant was misguided as signal of his train was on east line and because of that by mistake only he passed the gate. As soon as he noticed that the east line home was red, then immediately he started controlling his train, but he could not succeed immediately in his attempt because of the poor power brake and less amount of CMS of Vacuum in rear HVG and after travelling for some distance train was controlled and stopped. It may be stated that the incident has not resulted into any casualty. The original applicant had put on 33 years of service and except one other

trivial incident which took place way back in 1968 no such incident had occurred in his long career of 33 years.

Under the circumstances, on considering the material on record of the case when the learned Tribunal has come to the conclusion that the charge of dereliction of duty was not found to be proved, then certainly this court, in its limited supervisory jurisdiction under Article 227 of the Constitution of India, would not interfere. Scope of Article 227 of the Constitution of India is very narrow and limited. Even error committed on facts or law cannot be corrected by this court in its supervisory jurisdiction under Article 227 of the Constitution of India as held by the Hon'ble Supreme Court in case of ***Mohd. Yunus v. Mohd. Mustaqim reported in AIR 1984 SC 38*** that;

> “A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction concerred on the High Courts under Art.227 of the Constitution is limited “to seeing that an inferior Court or Tribunal functions within the limits of its authority” and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

Ms.Mehta learned for the petitioners was not in a position to point out any jurisdictional error committed by learned Tribunal while allowing the original application filed by the respondent- original applicant.

In view of the above, we do not see any reason to interfere with the impugned judgment and order passed by the learned Tribunal, in this petition. Accordingly, this petition fails and is hereby dismissed.

Before parting, we must state that the original applicant had retired long back and at present he is 72 years, as stated by Mr.Jadav for the respondent, therefore, now the petitioners shall extend all the consequential benefits to the respondent – original applicant as early as possible and not later than 31.10.2006, as directed by the learned Tribunal. Accordingly, Rule discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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